

APPEAL

**United States District Court  
District of Massachusetts (Boston)  
CIVIL DOCKET FOR CASE #: 1:03-cv-12389-GAO  
Internal Use Only**

Gillis v. SPX Corporation Individual Account Retirement  
Plan  
Assigned to: Judge George A. O'Toole, Jr  
Cause: 29:1145 E.R.I.S.A.

Date Filed: 11/26/2003  
Date Terminated: 03/31/2007  
Jury Demand: Both  
Nature of Suit: 791 Labor: E.R.I.S.A.  
Jurisdiction: Federal Question

**Plaintiff**

**Thomas D. Gillis**

represented by **Evelyn Haralampu**  
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V.

**Defendant**

**SPX Corporation Individual Account  
Retirement Plan**

represented by **Amy K Trueblood**  
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Date Filed	#	Docket Text
11/26/2003	<a href="#">31</a>	COMPLAINT against SPX Corporation Individual Account Retirement Plan Filing fee: \$ 150, receipt number 52079, filed by Thomas D. Gillis. (Edge, Eugenia) (Entered: 12/01/2003)
11/26/2003	<a href="#">32</a>	Summons Issued as to SPX Corporation Individual Account Retirement Plan. (Edge, Eugenia) (Entered: 12/01/2003)
11/26/2003	<a href="#">33</a>	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Cohen. (Edge, Eugenia) (Entered: 12/01/2003)
12/17/2003	<a href="#">34</a>	AFFIDAVIT OF SERVICE Executed by Thomas D. Gillis. SPX Corporation Individual Account Retirement Plan served on 12/5/2003, answer due 12/25/2003. Acknowledgement filed by Thomas D. Gillis. (Edge, Eugenia) (Entered: 12/22/2003)
12/17/2003	<a href="#">35</a>	SUMMONS Returned Executed John B. Blystone, President and Chief Executive Officer SPX Corporation Individual Account Retirement Plan served on 12/5/2003, answer due 12/25/2003. (Edge, Eugenia) (Entered: 12/22/2003)
12/31/2003	<a href="#">36</a>	NOTICE of Appearance by Michael C. Palermo on behalf of SPX Corporation Individual Account Retirement Plan (Palermo, Michael) (Entered: 12/31/2003)
12/31/2003	<a href="#">37</a>	NOTICE of Appearance by Michael C. Palermo on behalf of SPX Corporation Individual Account Retirement Plan (Palermo, Michael) (Entered: 12/31/2003)
12/31/2003	<a href="#">38</a>	MOTION for Leave to Appear Pro Hac Vice by John F. Ward, Jr. and Amy K. Trueblood by SPX Corporation Individual Account Retirement Plan.(Palermo, Michael) (Entered: 12/31/2003)
12/31/2003	<a href="#">39</a>	ANSWER to Complaint by SPX Corporation Individual Account Retirement Plan.(Palermo, Michael) (Entered: 12/31/2003)
12/31/2003	<a href="#">40</a>	CORPORATE DISCLOSURE STATEMENT by SPX Corporation Individual Account Retirement Plan. (Palermo, Michael) (Entered: 12/31/2003)
01/23/2004	<a href="#">41</a>	NOTICE of Scheduling Conference Scheduling Conference set for 2/27/2004 09:30 AM in Courtroom 9 before George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 01/23/2004)
02/23/2004	<a href="#">42</a>	Joint Statement pursuant to Local Rule 16.1 by Thomas D. Gillis, SPX

		Corporation Individual Account Retirement Plan.(Edge, Eugenia) (Entered: 02/24/2004)
02/26/2004	11	First MOTION for Leave to Appear Pro Hac Vice by Ross B. Bricker by SPX Corporation Individual Account Retirement Plan.(Palermo, Michael) (Entered: 02/26/2004)
02/26/2004	12	First MOTION for Leave to Appear Pro Hac Vice by Andrew A. Jacobson by SPX Corporation Individual Account Retirement Plan. (Palermo, Michael) (Entered: 02/26/2004)
02/27/2004		electronic Clerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Scheduling Conference held on 2/27/2004. The joint statement submitted by counsel is adopted by the court. All non-expert discovery completed by 9/9/04. Interrogatories, document requests, requests for admissions and depositions not to exceed the permitted limit; All motions under FRCP 56 is to be filed by 10/29/04, with oppositions to be filed 21 days thereafter. Cross motions will most likely be filed simultaneously. (Court Reporter Marie Cloonan.) (Lyness, Paul) (Entered: 02/27/2004)
02/27/2004	13	CERTIFICATION pursuant to Local Rule 16.1 by SPX Corporation Individual Account Retirement Plan.(Edge, Eugenia) (Entered: 03/02/2004)
04/16/2004		Judge George A. O'Toole Jr.: Electronic ORDER entered granting 6 Motion for Leave to Appear Pro Hac Vice Added Ross B. Bricker for SPX Corporation Individual Account Retirement Plan, Andrew A. jacobson for SPX Corporation Individual Account Retirement Plan, Amy K Trueblood for SPX Corporation Individual Account Retirement Plan, granting 11 Motion for Leave to Appear Pro Hac Vice Added Ross B. Bricker for SPX Corporation Individual Account Retirement Plan, Andrew A. jacobson for SPX Corporation Individual Account Retirement Plan, Amy K Trueblood for SPX Corporation Individual Account Retirement Plan, granting 12 Motion for Leave to Appear Pro Hac Vice Added Ross B. Bricker for SPX Corporation Individual Account Retirement Plan, Andrew A. jacobson for SPX Corporation Individual Account Retirement Plan, Amy K Trueblood for SPX Corporation Individual Account Retirement Plan (Lyness, Paul) (Entered: 04/16/2004)
09/02/2004	14	Joint MOTION to Extend Schedule Order as Follows: All non-expert discovery completed: 10/15/2004: All Motions under Fed.R.Civ.P.56 filed: 12/3/2004 by Thomas D. Gillis.(Barrette, Mark) (Entered: 09/09/2004)
09/15/2004		Judge George A. O'Toole Jr.: Electronic ORDER entered granting 14 Motion for Extension of Time (Lyness, Paul) (Entered: 09/15/2004)
10/19/2004	15	JOINT MOTION to Extend Schedule Order by Thomas D. Gillis, SPX Corporation Individual Account Retirement Plan.c/s(Edge, Eugenia) (Entered: 10/20/2004)

10/27/2004	15	Judge George A. O'Toole Jr.: Electronic ORDER entered granting 15 Motion for Extension of Time (Lyness, Paul) (Entered: 10/27/2004)
02/02/2005	16	Joint MOTION for Extension of Time to 3/11/05 to Complete Discovery and Extend Deadline to File Motions Under Fed. R. Civ. P. Rule 56 by SPX Corporation Individual Account Retirement Plan.(Cavanaugh, Riehard) (Entered: 02/02/2005)
02/24/2005	16	Judge George A. O'Toole Jr.: Electronic ORDER entered granting 16 Motion for Extension of Time to Complete Discovery (Lyness, Paul) (Entered: 02/24/2005)
03/14/2005	17	Assented MOTION to Amend 1 Complaint and add defendant by Thomas D. Gillis. c/s (Attachments: # 1 Proposed amended complaint) (Edge, Eugenia) (Entered: 03/14/2005)
03/18/2005		E-Mail Notice re Assented to Motion to Amend Complaint (#17) originally issued on March 14, 2005 returned as undeliverable. Name of Addressee: Atty. Michael Palermo. Spoke with John, Michael Palermo no longer with firm. (Edge, Eugenia) (Entered: 03/18/2005)
04/22/2005	17	Judge George A. O'Toole Jr.: Electronic ORDER entered granting 17 Motion to Amend (Lyness, Paul) (Entered: 04/22/2005)
04/29/2005	18	MOTION for Leave to Appear Pro Hac Vice by Andrew W. Vail by SPX Corporation Individual Account Retirement Plan. (Attachments: # 1) (Cavanaugh, Richard) (Entered: 04/29/2005)
05/09/2005		Filing fee: \$ 50, receipt number 64101 regarding Motion to appear pro hac for Andrew Vail (Edge, Eugenia) (Entered: 05/10/2005)
05/09/2005	18	Judge George A. O'Toole Jr.: Electronic ORDER entered granting 18 Motion for Leave to Appear Pro Hac Vice Added Andrew W. Vail for SPX Corporation Individual Account Retirement Plan. cc/el (Edge, Eugenia) (Entered: 05/10/2005)
05/13/2005	19	ANSWER to Complaint with Jury Demand by SPX Corporation Individual Account Retirement Plan.(Cavanaugh, Richard) (Entered: 05/13/2005)
07/19/2005	20	Joint MOTION for Extension of Time to 10/25/2005 to Complete Discovery by SPX Corporation Individual Account Retirement Plan. (Cavanaugh, Richard) (Entered: 07/19/2005)
10/13/2005		NOTICE of Hearing: Status Conference set for 11/9/2005 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 10/13/2005)
10/24/2005	20	Judge George A. O'Toole Jr.: ElectronicORDER entered granting 20 Motion for Extension of Time to Complete Discovery (Lyness, Paul) (Entered: 10/24/2005)
10/24/2005	21	JOINT MOTION to Extend Schedule Order by Thomas D. Gillis, SPX Corporation Individual Account Retirement Plan.(Edge, Eugenia)

		(Entered: 10/26/2005)
11/09/2005	3	ElectronicClerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Status Conference held on 11/9/2005, The joint motion to Extend Schedule Order., filed on 10/24/05 is GRANTED. All non-motion expert discovery completed by 12/9/05; All motions under Rule 56 are to be filed by 1/25/06. Motions terminated: 21 MOTION for Extension of Time filed by Thomas D. Gillis., SPX Corporation Individual Account Retirement Plan.. (Court Reporter Shelly Killian.) (Lyness, Paul) (Entered: 11/10/2005)
01/23/2006	22	Joint MOTION to Amend <i>Schedule Order</i> by Thomas D. Gillis, SPX Corporation Individual Account Retirement Plan.(Vail, Andrew) (Entered: 01/23/2006)
01/24/2006	3	Judge George A. O'Toole Jr.: Electronic ORDER entered granting 22 Motion to Amend (Lyness, Paul) (Entered: 01/24/2006)
02/08/2006	23	MOTION for Summary Judgment <i>on Liability</i> by Thomas D. Gillis. (Murray, Lawrence) (Entered: 02/08/2006)
02/08/2006	24	MEMORANDUM in Support re 23 MOTION for Summary Judgment <i>on Liability</i> filed by Thomas D. Gillis. (Murray, Lawrence) (Entered: 02/08/2006)
02/08/2006	25	AFFIDAVIT of Thomas D. Gillis in Support re 23 MOTION for Summary Judgment <i>on Liability</i> filed by Thomas D. Gillis. (Attachments: # 1 Exhibit A# 2 Exhibit B through E# 3 Exhibit F# 4 Exhibit G through J# 5 Exhibit K through N# 6 Exhibit O through P# 7 Exhibit Q through S)(Murray, Lawrence) (Entered: 02/08/2006)
02/08/2006	26	STATEMENT of Undisputed facts re 23 MOTION for Summary Judgment <i>on Liability</i> . (Murray, Lawrence) Modified on 2/13/2006 to modify text(Edge, Eugenia). (Entered: 02/08/2006)
02/08/2006	27	MOTION for Summary Judgment by SPX Corporation Individual Account Retirement Plan.(Vail, Andrew) (Entered: 02/08/2006)
02/08/2006	28	MEMORANDUM in Support re 27 MOTION for Summary Judgment filed by SPX Corporation Individual Account Retirement Plan. (Attachments: # 1 Certificate of Service# 2 Exhibit A# 3 Exhibit A-2# 4 Exhibit B# 5 Exhibit B-1.1# 6 Exhibit B-1.2# 7 Exhibit B-2# 8 Exhibit B-3# 9 Exhibit B-4# 10 Exhibit B-5# 11 Exhibit B-6# 12 Exhibit B-7# 13 Exhibit B-8# 14 Exhibit B-9# 15 Exhibit B-10# 16 Exhibit B-11.1# 17 Exhibit B-11.2# 18 Exhibit B-12# 19 Exhibit C-1# 20 Exhibit C-2# 21 Exhibit C-3# 22 Exhibit C-4# 23 Exhibit C-5# 24 Exhibit C-6# 25 Exhibit C-7# 26 Exhibit C-8# 27 Exhibit C-9# 28 Exhibit C-10# 29 Exhibit C-11# 30 Exhibit C-12# 31 Exhibit C-13# 32 Exhibit D# 33 Exhibit E# 34 Exhibit F# 35 Exhibit G-1# 36 Exhibit G.2# 37 Exhibit H# 38 Exhibit I)(Vail, Andrew) (Entered: 02/09/2006)
02/09/2006	29	STATEMENT of facts re 27 MOTION for Summary Judgment. (Attachments: # 1 Certificate of Service)(Vail, Andrew) (Entered: 02/09/2006)

		02/09/2006)
02/27/2006	30	Joint MOTION for Extension of Time ( <i>Motion to Extend Scheduling Order</i> ) by Thomas D. Gillis, SPX Corporation Individual Account Retirement Plan.(Vail, Andrew) (Entered: 02/27/2006)
02/28/2006		Judge George A. O'Toole Jr.: Electronic ORDER entered granting 30 Motion for Extension of Time, until 3/13/06, to file oppositions to motion for summary judgment. (Lyness, Paul) (Entered: 02/28/2006)
03/10/2006	31	Opposition re 27 MOTION for Summary Judgment filed by Thomas D. Gillis. (Murray, Lawrence) (Entered: 03/10/2006)
03/10/2006	32	STATEMENT of facts re 27 MOTION for Summary Judgment <i>Plaintiff's Reply to Defendants Statement of Material Facts.</i> (Murray, Lawrence) (Entered: 03/10/2006)
03/13/2006	33	MEMORANDUM in Opposition re 23 MOTION for Summary Judgment <i>on Liability</i> filed by SPX Corporation Individual Account Retirement Plan. (Attachments: # 1 Exhibit A# 2 Exhibit B)(Vail, Andrew) (Entered: 03/13/2006)
03/13/2006	34	Response by SPX Corporation Individual Account Retirement Plan to 26 Statement of facts. (Vail, Andrew) (Entered: 03/13/2006)
04/04/2006	35	First MOTION for Leave to File <i>Reply Memorandum in Response to Defendants' Memorandum of Law in Opposition to Plaintiff's Motion For Summary Judgment</i> by Thomas D. Gillis.(Murray, Lawrence) (Entered: 04/04/2006)
04/14/2006		NOTICE of Hearing on Motion 35 First MOTION for Leave to File <i>Reply Memorandum in Response to Defendants' Memorandum of Law in Opposition to Plaintiff's Motion For Summary Judgment</i> , 23 MOTION for Summary Judgment <i>on Liability</i> , 27 MOTION for Summary Judgment: Motion Hearing set for 6/27/2006 02:00 PM in Courtroom 9 before Judge George A. O'Toole Jr.. Please mark your calendars accordingly. (Lyness, Paul) (Entered: 04/14/2006)
06/27/2006		ElectronicClerk's Notes for proceedings held before Judge George A. O'Toole Jr.: Motion Hearing held on 6/27/2006 re 23 MOTION for Summary Judgment <i>on Liability</i> filed by Thomas D. Gillis., 27 MOTION for Summary Judgment filed by SPX Corporation Individual Account Retirement Plan., 35 First MOTION for Leave to File <i>Reply Memorandum in Response to Defendants' Memorandum of Law in Opposition to Plaintiff's Motion For Summary Judgment</i> filed by Thomas D. Gillis., Atty. Murray, Haralampu for plaintiff. Atty. Jacobson for defendant. Court hears oral argument of both sides. Court takes matter under advisement. Start time: 2:02pm End time: 2:43pm (Court Reporter Shelly Killian.) (Edge, Eugenia) (Entered: 06/28/2006)
09/01/2006	36	NOTICE of <i>Supplemental Authority</i> by SPX Corporation Individual Account Retirement Plan (Attachments: # 1 Exhibit A)(Jacobson, Andrew) Modified on 9/5/2006 (Edge, Eugenia). (Entered: 09/01/2006)

09/07/2006	337	Emergency MOTION to Stay <i>Consideration of Pending Cross Motions for Summary Judgment Because of Recently Enacted Pension Law</i> by Thomas D. Gillis.(Twohig, Michael) (Entered: 09/07/2006)
09/08/2006	338	MOTION for Leave to File <i>Supplemental Summary Judgment Memorandum Regarding Recently Enacted Pension Law</i> by Thomas D. Gillis. (Attachments: # 1 Exhibit A)(Twohig, Michael) (Entered: 09/08/2006)
09/08/2006	339	MOTION for Leave to File <i>Response to Defendants' Notice of Supplemental Authority</i> by Thomas D. Gillis. (Attachments: # 1 Exhibit A)(Twohig, Michael) (Entered: 09/08/2006)
09/22/2006	340	MEMORANDUM in Opposition re 38 MOTION for Leave to File <i>Supplemental Summary Judgment Memorandum Regarding Recently Enacted Pension Law</i> filed by SPX Corporation Individual Account Retirement Plan. (Attachments: # 1 Exhibit A)(Jacobson, Andrew) (Entered: 09/22/2006)
01/12/2007	3	Judge George A. O'Toole Jr.: Electronic ORDER entered granting Nunc Pro Tunc 35 Motion for Leave to File; (Lyness, Paul) (Entered: 01/12/2007)
03/31/2007	41	Judge George A. O'Toole Jr.: MEMORANDUM AND ORDER entered granting 27 Motion for Summary Judgment, denying 23 Motion for Summary Judgment. The SPX Retirement Plan does not violate ERISA's anti-cutback, merger or age discrimination provisions, and the manner in which the defendants administered the plan did not violate any fiduciary duty they might have owed to Gillis. Finally, having considered the factors set forth in <i>Cottrill v Sparrow, Johnson &amp; Ursillo, Inc.</i> 100 F.3d 220,225 (1st Cir. 1996), I conclude that neither Gillis nor the defendants are entitled to the award of attorneys fees. (Lyness, Paul) (Entered: 04/02/2007)
03/31/2007	42	Judge George A. O'Toole Jr.: ORDER entered. JUDGMENT in favor of Defendants against Plaintiff(Lyness, Paul) (Entered: 04/02/2007)
04/30/2007	43	NOTICE OF APPEAL as to 41 Order on Motion for Summary Judgment,,,,, 42 Judgment by Thomas D. Gillis Filing fee \$ 455, receipt number 1500420 NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 5/21/2007. (Murray, Lawrence) (Entered: 04/30/2007)